

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2004 OCT 29 P 4:33

BRANDON ASSOCIATES, LLC)	U.S. DISTRICT COURT DISTRICT OF MASS. CIVIL ACTION
Plaintiff/Counterclaim-Defendant)	
))	
v.)	NO. 04 12013NMG
))	
FAILSAFE AIR SAFETY SYSTEMS)	
CORP., BLUE SAGE CONSULTING,))
INC., ELCOM MEDICAL,)	
DEBRA ESPE, ALAN FEUERSTEIN)	
Defendant/Counterclaim-Plaintiff))

MOTION FOR LEAVE TO REPLY TO COUNTERCLAIMS

Brandon Associates, LLC ("Brandon"), The Plaintiff/Counterclaim-Defendant, hereby moves this Honorable Court for leave to reply eight (8) days late to the counterclaims filed by the Defendant/Counterclaim-Plaintiff FailSafe Air Safety Systems, Corp. ("FailSafe") in this Court on September 30, 2004. In an October 28, 2004 telephone conversation between the Parties, opposing counsel refused to assent to the filing of this Reply. See *City of Wichita v. Bd. of County Comm'rs of Sedwich County*, 1997 WL 255277 (granting motion for leave to reply to a reply); *Ochoa v. Principal Mutual Ins.*, 144 F.R.D. 418, 420 (N.D. Ga. 1992); *Daval Steel Products v. M/V Fakredine*, 1990 WL 164822 (S.D.N.Y. 1990), aff'd, *Daval Steel Products v. M/V Fakredine*, 940 F.2d (2nd Cir. 1991) (granting motion for

leave to reply to counterclaims).

In further support of this motion, the Plaintiff/Counterclaim-Defendant respectfully refers the Court to the Affidavit of Counsel served in conjunction with this motion.

Respectfully Submitted,

Brandon Associates, LLC
By its attorney,

Stacy J. Silveira, Esq.

Stacy J. Silveira, Esq.
BBO#650675
Brandon Associates, LLC
160 Commonwealth Avenue
Boston, MA 02116
(617) 695-8949

Certificate of Service

I hereby certify that I caused a true copy of the above document to be served upon the attorneys of record for each of the other parties in this action by placing the documents in the U.S. Mail this 29th day of October, 2004.

Stacy J. Silveira, Esq.
Stacy J. Silveira, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRANDON ASSOCIATES, LLC)
Plaintiff/Counterclaim-Defendant)
v.) CIVIL ACTION
FAILSAFE AIR SAFETY SYSTEMS)
CORP., BLUE SAGE CONSULTING,)
INC., ELCON MEDICAL,)
DEBRA ESPE, ALAN FEUERSTEIN)
Defendant/Counterclaim-Plaintiff)
)

Affidavit of Counsel

I, Stacy J. Silveira, Esq., hereby state that, to the best of my knowledge and belief, the following is a true and accurate statement:

1. That on September 8, 2004, the Plaintiff/Counterclaim-Defendant Brandon Associates, LLC filed the original Verified Complaint and Action to Reach and Apply on in the Massachusetts Superior Court. That shortly thereafter, the Defendant/Counterclaim-Plaintiff removed the case to this Court.
2. That on September 24, 2004, the Plaintiff/Counterclaim-Defendant amended the Verified Complaint and Action to Reach and Apply ("Amended Complaint") pursuant to Fed.R.Civ.P. 15(a).
3. That on September 30, 2004, the Defendant/Counterclaim-Plaintiff filed its Answer and Counterclaim to the original Verified Complaint and Action to Reach and Apply.
4. That the Defendant/Counterclaim-Plaintiff has failed to Answer the Amended Verified Complaint and Action to Reach and Apply ("Amended Complaint"), which was filed in this Court on September 24, 2004.
5. That out of an abundance of caution, and even though the Defendant/Counterclaim-Plaintiff has yet to respond to the Amended Complaint, the Plaintiff/Counterclaim-Defendant hereby moves to Reply to the Counterclaim to the Original Complaint.

6. That on October 5, 2004, the Defendant/Counterclaim-Plaintiff filed with this Court a Motion to Strike and for Sanctions.

7. That on October 18, 2004, the Plaintiff/Counterclaim-Defendant filed with this Court its Response to Defendant's Motion To Strike And For Sanctions.

8. That Counsel for the Plaintiff/Counterclaim-Defendant necessarily spent a great deal of time in preparing a response and responding to the Defendant's Motion To Strike And For Sanctions.

9. That Plaintiff/Counterclaim-Defendant's Counsel is the sole attorney at her place of business, and as such, Counsel has been extraordinarily busy with other business matters, and said business matters have prevented Counsel from filing this Reply to the Defendant's Counterclaim at an earlier date.

10. That in a telephone conversation of October 28, 2004, opposing counsel refused to consent to the filing of this Reply eight days late.

Respectfully Submitted,

Brandon Associates, LLC
By its attorney,



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